

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMONWEALTH EDISON COMPANY,
JOHNS MANVILLE,
MIDWEST GENERATION, LLC, and
THE CITY OF WAUKEGAN, ILLINOIS,

Defendants.

07CV3799

JUDGE NORGLÉ

MAGISTRATE JUDGE ASHMAN

COMPLAINT

The United States of America, by and through the undersigned attorneys, by the authority of the Attorney General of the United States, and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

Nature of the Action

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607(a). The United States seeks to recover costs it has incurred in connection with the Johns Manville Superfund Site, Site 2 (Former Shooting Range) (the "Site"), which is located south of Greenwood Avenue, east of Pershing Road, and west of Lake Michigan in Waukegan, Lake County, Illinois. In addition, the United States seeks a judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), declaring that the Defendants are liable for any further response costs that the United States may incur as a result of releases or threatened releases of hazardous substances at the Site.

Jurisdiction and Venue

2. This Court has jurisdiction over the parties to this action and the subject matter thereof pursuant to 42 U.S.C. §§ 9607(a) and 9613(b) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the actual and threatened releases of hazardous substances occurred, in this district.

Defendants

4. Defendant Commonwealth Edison Company (“ComEd”) is a corporation organized under the laws of the State of Illinois.

5. Defendant Johns Manville (“JM”) and Defendant Midwest Generation, LLC (“MWGen”) are corporations organized under the laws of the State of Delaware.

6. Defendant City of Waukegan is a political subdivision of the State of Illinois.

The Site

7. In approximately 1959, a shooting range was constructed at the Site for the 1959 Pan American Games.

8. At the time the shooting range was constructed, the owners of the Site included ComEd, JM, and the City of Waukegan. Current owners of the Site include ComEd and MWGen.

9. In approximately 1959, JM contributed and transported asbestos-containing material (“ACM”) to the Site for berms that were designed (in part) to prevent bullets from traveling into Lake Michigan.

10. Also in approximately 1959, ComEd paid a contractor to dredge sand from a

channel near Lake Michigan. This dredged sand contained ACM, and ComEd donated the sand to the shooting range, where it was used for grading.

11. After the conclusion of the Pan American Games, the City of Waukegan operated, or authorized the operation of, the Site as a shooting range until 1971. In 1970 and 1971, City employees razed berms at the Site and spread materials from the berms across the Site.

12. In 1998, the State of Illinois informed EPA that ACM had been found at the Site. EPA thereafter investigated and evaluated the threat to human health and the environment posed by asbestos at the Site. In 2002, EPA, through its contractors, removed asbestos contamination at the Site ("Removal Action").

13. The United States has incurred, and continues to incur, response costs in connection with the Site, including but not limited to costs related to enforcement by EPA and the United States Department of Justice ("DOJ"). As of October 31, 2006, EPA costs related to the Site totaled \$4,383,299.38. As of August 19, 2006, DOJ costs related to the Site totaled \$140,427.78.

14. To date, none of the Defendants has reimbursed the United States for any of the aforementioned costs.

CERCLA Liability

15. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides, in pertinent part, that the following persons are liable for "response costs" which are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, and which are incurred by the United States as a result of a "release" or threatened release of "hazardous substances" from a "facility":

(1) the [current] owner or operator of . . . [the] facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated [the] facility . . . ,

(3) any person who . . . arranged for disposal or treatment [at the facility], or arranged with a transporter for transport for disposal or treatment [at the facility], of hazardous substances owned or possessed by such person . . . , and

(4) any person who . . . accepted any hazardous substances for transport to [the facility]

42 U.S.C. § 9607(a).

16. The Site is a “facility” within the meaning and scope of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

17. Soil and lake sediment at the Site were found by EPA and the State of Illinois to contain asbestos and other “hazardous substances” within the meaning and scope of CERCLA Sections 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a).

18. “Disposal” of hazardous substances, including ACM, occurred at the Site, within the meaning and scope of CERCLA Sections 101(29) and 107(a), 42 U.S.C. §§ 9601(29) and 9607(a).

19. There were actual and threatened “releases” of hazardous substances from the Site, within the meaning and scope of CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22) and 9607(a).

20. The actual and threatened releases of hazardous substances from the Site caused the United States to incur “response costs” within the meaning and scope of CERCLA Sections 101(25) and 107(a), 42 U.S.C. §§ 9601(25) and 9607(a).

21. The Removal Action was not inconsistent with the National Contingency Plan.

40 C.F.R. Part 300.

22. Each of the Defendants is a “person” within the meaning and scope of CERCLA Section 101(21), 42 U.S.C. § 9601(21)

23. ComEd is a current owner of the Site, and at the time of disposal was an owner of the Site, within the meaning and scope of CERCLA Sections 107(a)(1) and (a)(2), 42 U.S.C. §§ 9607(a)(1) and (a)(2). In addition, ComEd arranged for disposal of ACM at the Site, within the meaning and scope of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

24. At the time of disposal, JM was an owner of the Site, within the meaning and scope of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2). In addition, JM arranged for disposal of ACM at the Site, and transported ACM to the Site, within the meaning and scope of CERCLA Sections 107(a)(3) and (a)(4), 42 U.S.C. §§ 9607(a)(3) and (a)(4).

25. MWGen is a current owner of the Site, within the meaning and scope of CERCLA Section 107(a)(1), 42 U.S.C. § 9607(a)(1).

26. At the time of disposal, the City of Waukegan was an owner and operator of the Site, within the meaning and scope of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

First Claim for Relief

27. The allegations in the foregoing paragraphs are incorporated herein by reference.

28. Each of the defendants is jointly and severally liable to the United States pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all response costs incurred by the United States in connection with the Site, including (without limitation) pre-judgment interest.

Second Claim for Relief

29. The allegations in the foregoing paragraphs are incorporated herein by reference.

30. Pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment, binding on any subsequent action to recover further response costs relating to the Site, that the Defendants are liable for such costs.

Prayer for Relief

WHEREFORE, the United States respectfully requests that this Court:

A. Award the United States a judgment against the Defendants, jointly and severally, for all response costs incurred by the United States in connection with the Site, including pre-judgment interest;

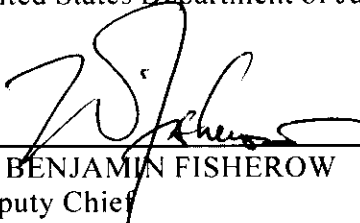
B. Enter a declaratory judgment, binding on any subsequent action to recover further response costs relating to the Site, that the Defendants are liable for such costs; and

C. Grant other relief as the Court deems just and proper.

Dated: June 27, 2007

Respectfully submitted,

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